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CLEARINGHOUSE RULE 95-236

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. Certain definitions in s. HSS 89.13 appear to be unnecessary, including definitions of “kitchen,” “bathroom,” “sleeping area” and “living area.” Since the physical requirements of a kitchen, bathroom, sleeping area and living area in an “independent apartment” are clear from reading s. HSS 89.22, it is unnecessary to define these terms. Also, if the definition of “kitchen” is retained, the substantive portions of the definition should be deleted. [See s. 1.01 (7) (b), Manual.]

b. In s. HSS 89.13 (19), “nurse practice act” should replace “Nurse Practice Act.”

c. In s. HSS 89.22 (2) (b) 3. and elsewhere in the rule, “may not” should replace “shall not” in expressing a prohibition. [See s. 1.01 (2), Manual.]

d. In s. HSS 89.22 (2) (e) 2., “, at its sole discretion,” is redundant and should be deleted.

e. Section HSS 89.48 should be written in the active voice. The words “is prohibited” should be deleted and the section should begin “No person may engage in any form of coercion....”

f. The final clause of s. HSS 89.52 (3) should be written “...the department shall issue a notice of denial to the applicant.” See the previous subsection in the rule.

4. Adequacy of References to Related Statutes, Rules and Forms

- a. In s. HSS 89.32, “, rules” should be inserted after “ordinances.”
- b. Since subch. IV of ch. HSS 89 refers to certification of assisted living facilities for Medical Assistance reimbursement, should a cross-reference to ch. HSS 89 be included in chs. HSS 105 and 107?
- c. Should s. HSS 89.49 (1) also refer to “summarily suspended”? See s. HSS 89.47 (2).
- d. In the Note following s. HSS 89.51, “(b)” should be deleted.

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. Section HSS 89.22 (1) could be simplified by substituting “comply” for “be responsible for complying.”
- b. In s. HSS 89.22 (4) (c), “assisted living services” is an undefined term. Unless this phrase or the term “services” is defined, the reference should be to “supportive services,” “personal services” and “nursing services,” as these are defined terms. In the alternative, after the phrase “assisted living services,” a cross-reference to s. HSS 89.23 would clarify the meaning of the phrase. The term “routine” which is used to modify the phrase “supportive, personal or nursing services” is ambiguous and should be explained or eliminated. Section HSS 89.25 is another good example of the need to define “services.”
- c. Section HSS 89.23 (3) (a) contains two ambiguities: (1) use of the undefined phrase “assisted living facility services” (see the previous comment); and (2) reference to the undefined term “functions” in the phrase “functions or services.”
- d. In s. HSS 89.23 (3) (b) 1., since “service agreement” is a defined term, the word “resident” is not needed immediately preceding the term.
- e. In s. HSS 89.23 (3) (c), whereas the terms “convictions” and “crime” are understandable without further clarification, the terms “substantiated findings” and “violation” are ambiguous and require explanation in the text of the rule.
- f. “Contract” is defined in s. HSS 89.13 (6) to mean all written agreements between the resident and the assisted living facility, including the service agreement, the risk agreement and any rental or sales contract. Unless a provision is created to require the same effective date on each of these separate agreements, or to require each of these agreements to be included in a single “contract,” referring to the “effective date of the contract” in s. HSS 89.28 (1) is ambiguous.
- g. In s. HSS 89.28 (2) (c), what does the phrase “any other aspect of life in” mean? Also, in s. HSS 89.28 (2) (a) 5. and 6., “agreed upon” should be hyphenated. See s. HSS 89.27 (1). In subd. 3., should “needs” replace “need”?
- h. Section HSS 89.29 (1) (c) permits a person who is incompetent under that paragraph to be admitted to an assisted living facility if the person shares an apartment with a competent

spouse or other person who has legal responsibility for the person. However, a person who is incompetent under par. (a) or incapacitated under par. (b) would not be allowed to do so. Is this intended?

i. Should s. HSS 89.29 (2) refer to a guardian under ch. 880, Stats.? See sub. (1) (a).

j. In s. HSS 89.34, the phrase “terminates whenever any of the following occurs:” should be substituted for the phrase “shall immediately and automatically be terminated for any of the following reasons:”.